

Small Business Regulatory Fairness Board Board Meeting

**Hyatt Regency Hotel
Executive Board Room
Kansas City, MO**

September 15, 2010

Members Attending: Chair Nancy Zurbuchen, Kansas City; Sheila Forrest, St. Louis; Vice Chair Shane Libel, St. Joseph; and Micheal Ocello, St. Louis.

Members Absent: Bob Bess, St. Louis; Phillip Franz, Joplin; Sheila Sweeney, St. Louis and Representative Vickie Englund, St. Louis.

DED Staff Present: Sherry L. Anderson, DED-Boards and Commissions Liaison and Vicki Webster, DED-Assistant General Counsel.

Board Business Meeting

Chairman Nancy Zurbuchen called the SBRFB September 15, 2010 meeting to order at 9:15 a.m. Chairman Zurbuchen welcomed everyone to the meeting and thanked all in attendance for their support and participation.

Chair Zurbuchen discussed for future meeting and how it would be cost-savings and give more Board members the ability to participate she would like to continue utilizing GoToMeeting, or possibly using Skype. Mr. Ocello also suggested Webinar's web-based meeting capabilities.

The members discussed their ideas and expectations for future board members. Chair Zurbuchen suggested developing written criteria and expectations to be used by those doing Board appointments. The developed the following list:

1. Meeting Attendance: conference calls and face-to-face meetings.
2. A Board member should be engaged and will agree to attend a certain percentage of the board meetings Mr. Ocello suggested 75 or 80 percent attendance, with 3 or 4 face-to-face meetings.
3. The chairman should have the authority to ask a member to resign if they are not participating.
4. Be able to communicate by e-mail, and participate in conference calls utilizing GoToMeetings .

Mr. Ocello stated he believed the Board should have the ability to remove a person if they are not attending face-to face Board meetings or participating in the Board conference calls. Mr. Libel suggested the Board inform the legislative appointing person or the Governor's Office the appointee is not meeting the expectations of a SBRFB member, and also this reflects poorly on the appointing person. Ms. Forrest asked how do we, members of the SBRFB hold people accountable because the person may have good intentions but they have not been able to participate.

Chairman Zurbuchen stated that SBRFB should develop criteria for the Governor's Office and the House and Senate leadership to utilize before appointing a person to the Board, most noted criterion (see page 7-Vernon's Annotation handout) for appointing person to the Board, would be geographic diversity. Also, Chairman Zurbuchen stated the Governor's Office-Boards and Commissions-Missouri Small Business Regulatory Fairness website needs to be revised because it lacks information to invoke people to apply to become a member.

Small Business Comment Process

The Board members reviewed the current SBRFB Small Business Comment process, as established under Chapter 536.315 RSMo. The law states: Any state agency receiving recommendations from the board shall promptly consider such recommendations and may file a response with the board within sixty days of receiving the board's recommendations.

Chair Zurbuchen believes the first response time-frame of 60 days allowed by statute to the comment or inquiry too long. Chair Zurbuchen believes that 30 days is sufficient time for a state agency to respond.

Ms. Webster distributed copies of Westlaw's Vernon Annotated Missouri Statutes (SBRFB) Chapter 536, RSMo, and Missouri Code of State Regulations to the Board members. Ms. Webster referred Chair Zurbuchen to page 12, to **Chapter 536.315. State agencies to consider board recommendations, response:** *Any state agency receiving recommendations from the board shall promptly consider such recommendations and may file a response with the board within sixty days of receiving the board's recommendations.* Ms. Webster explained that the only the Board could not change the sixty days response timeline was by legislative action or amending the Chapter.

Mr. Ocello questioned whether it is 60 days with every response or subsequent responses, and some issues can be more complicated. Chair Zurbuchen believes the 60 days is too long for the state agency to respond and if a state agency needed additional time to respond to the comment or recommendation, they request a time extension from the Board. The Board did not take any action on the Chair's recommendations.

Rules and Regulations Filed with SBRFB

2010 Fiscal Year State Agency Regulation Spreadsheet

Ms. Anderson distributed a draft report of the SBRFB rules and amendments filed by state agencies from July 1, 2009 through June 30, 2010. Ms. Anderson stated the report is not final because she has not been able to verify agency e-mail correspondence from July 1, 2009 and February 1, 2010. Ms. Anderson is working with the IT personnel to try to qualify information.

Decision of Review Process by SBRFB Members

Mr. Ocello asked Ms. Webster to explain the (Small Business Impact Statement) form the state agencies are required to file with SBRFB when the agencies file proposed rules and amendments. Ms. Webster referred to the definition of “substantial” in Chapter 536.010 RSMo,

(6) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of an existing rule, but does not include:

(a) A statement concerning only the internal management of an agency and which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof;

(b) A declaratory ruling issued pursuant to section 536.050, or an interpretation issued by an agency with respect to a specific set of facts and intended to apply only to that specific set of facts;

(c) An intergovernmental, interagency, or intra-agency memorandum, directive, manual or other communication which does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof;

Chair Zurbuchen read an e-mail from, former chair of SBRFB, Scott George comments dated August 15 regarding SBRFB regulatory alert regarding proposed rules filed by the Department of Insurance, Financial Institutions and Professional Registration (DIPR). Mr. George stated his opinion and following observation of the proposed rules:

One of the key goals, actually a requirement, of SBRFB is to solicit small business input during the creation of a rule.

20 CSR 2205-5.010 Continuing Competency Requirements-The Occupational Therapist rule only references that a representative of the association attends every

meeting. Most DIPR boards actually send draft rules to associations and a few key interested small businesses. How hard can this be?

20 CSR 2267-2.030 License Renewal-The tattoo rule did even less. The did not ask anyone. Just posted the rule for 30 day comment. I know there are interested small businesses because I've talked to them and provided contact info to the board before. DIPF should not let their Boards ignore SBRFB like this. Yes, I know they cannot MAKE them do it. Still, DIPR should be held accountable. BTW. I like the rule intent and urge other Boards to do the same.

20 CSR 2165-2.010 Hearing Instrument Specialist in Training (Temporary Permits). The SB Impact statement is not there for this rule. I'm a licensed HIS so I did comment on this rule. Was ignored of course. Everyone knows there is a problem with some trainees passing exams. This does not address the issue. Well at least they listened politely. LOL No, they did not reach out to affected small businesses either. I happened to be at the meeting,

*Yours for Reg Fair,
Scott George*

Chair Zurbuchen wants to set up a process for the Board members to review the numerous rules and amendments filed because she believes the proposed rules are not receiving the level of scrutiny or evaluation as in the past. She also stated that the Board members need to step their commitment to this process.

Agency Criteria

Chair Zurbuchen believes the state agencies need to step it up a notch and the Board's criteria for small business impact statements should include more detail and the state agencies should include more input from businesses.

Chair Zurbuchen stated past SBRRB chairs Scott George and Randy Angst (who is now the president of the NFIB Leadership Council), held SBRFB public hearings with state agencies requesting presentations:

- Outlining its efforts to solicit input from small businesses prior to implementing new rules and regulations;
- Efforts the state agencies has made to find alternative ways to implement rules and regulations and lessen the burden on small businesses; and
- Request the state agencies present what they were doing to comply with Chapter 536 RSMo.

Chair Zurbuchen stated that the lack of support and commitment of a support person from Department of Economic Development (DED) is strangling the SBRFB abilities to

provide more support to small business owners and it has allowed the state agencies to ignore the rule process with respect the implications on small business owners.

Chair Zurbuchen stated House Bill 2103, introduced in 2010 would have earmarked money for a full time position and a part-time position in DED for the SBRFB. The revenue stream would have designated 50 cents from small business license filings with the Secretary of State. The bill received a committee hearing but was not debated by either the House or Senate.

Chair Zurbuchen asked the Board members for recommendations on how the Board should address these issues and concerns and we will discuss those recommendations at our next meeting.

Discussion of SBRFB 2010 Annual Report

Chair Zurbuchen stated she wanted to establish a new policy regarding the Board's policy for filing the Board's annual report. Adopt December 31st as the date the SBRFB provides an evaluation report to the Governor and the General Assembly. The Board did not confirm the policy because they did not have a quorum.

Review Process for State Agency Progress Reports

Mr. Ocello suggested the Board work closer with state agencies and set up a meeting with state liaisons to establish an open discuss. It would be helpful if the Board would explain how they established the criteria for evaluating the agencies performance.

Content of 2010 Annual Report

Chair Zurbuchen suggested the annual reports be condensed and that it was not necessary to include the SBRFB comments filed by small business owners and responses from the state agencies.

Board Members Composition and Terms

Chair Zurbuchen asked the Board members to consider the following:

- Do we (SBRFB) need to consider changing the term process of the Board?
- Should the Board members terms be longer to maintain experience and historical knowledge?
- Should the SBRFB members have the power to ask an appointed SBRFB member to resign if the Board members deem the person is not fulfilling their responsibilities as a member of the Board?

Mr. Ocello suggested the SBRFB members develop a training manual for new Board members.

With no further business to discuss, Chair Zurbuchen adjourned the September 15, SBRFB meeting.

Dated

Nancy Zurbuchen, Chair
MO Small Business Regulatory
Fairness Board